

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2324

Introduced by Assembly Member Eggman

February 18, 2016

An act to amend Sections 47000.5, 47001, 47004, 47020, *and* 47021 of, and to add Section 47005.4 to, the Food and Agricultural Code, relating to certified farmers' markets.

LEGISLATIVE COUNSEL'S DIGEST

AB 2324, as amended, Eggman. Certified farmers' markets.

Existing law provides for the regulation of certified farmers' markets and authorizes the Secretary of Food and Agriculture to adopt regulations to encourage the direct sale by farmers to the public of all types of California agricultural products. Existing law requires vendors of agricultural products selling within a certified farmers' market to comply with specified requirements. Existing law makes it unlawful to violate the provisions regulating certified farmers' markets, and authorizes the secretary or a county agricultural commissioner, in lieu of prosecution, to levy a civil penalty against a person who violates those provisions. *Existing law defines "agricultural product" for purposes of the certified farmers' market provisions.*

This bill would revise the definition of "agricultural product" to include wool, and would also specify that certain products that are not agricultural products may be sold at a certified farmers' market if the operator of the certified farmers' market ensures that certain conditions are satisfied, including that the product is offered for sale by a producer who is authorized to sell agricultural products at the certified farmers' market.

This bill would specify the Legislature's intent that the secretary, in adopting those regulations and regulations clarifying the provisions regulating certified farmers' markets, endeavor to keep costs incurred by farmers and certified farmers' market operators at a minimum.

This bill would additionally require vendors of agricultural products at certified farmers' markets to keep specified sales records for at least 6 12 months and would require a vendor to make those records available for inspection by any state or county enforcement agency within ~~72 hours~~ 3 business days of delivery of the request or within a reasonable time period, as specified. The bill would also require a certified farmers' market operator, upon written request by a state or county enforcement agency pursuant to an investigation of an alleged violation of a specified law, to *commence to* note and make record of the product identity of all fresh fruits and vegetables offered for sale by a vendor, and to furnish the agency with a copy of those notes and records within ~~72 hours~~ 3 business days of the a subsequent request or within a reasonable time period, as specified. By imposing additional requirements on vendors and operators of certified farmers' markets, the violation of which would be a crime, the bill would impose a state-mandated local program.

Existing law requires a producer to obtain a certified producer's certificate from a county agricultural commissioner before selling at a certified farmers' market and also requires the Department of Food and Agriculture to maintain a current listing of certified producers.

This bill would require a county agricultural commissioner to forward a digital copy of each certified producer's certificate issued to the department and would require the department to maintain an online, publicly accessible database listing all current certified producer certificates. By imposing additional duties on county agricultural commissioners, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 47000.5 of the Food and Agricultural*
2 *Code is amended to read:*

3 47000.5. The following definitions apply to this chapter, unless
4 otherwise specified:

5 (a) (1) “Agricultural product” means a fresh or processed
6 product produced in California, including fruits, nuts, vegetables,
7 herbs, mushrooms, dairy, shell eggs, honey, pollen, unprocessed
8 bees wax, propolis, royal jelly, flowers, grains, nursery stock, *wool*,
9 livestock meats, poultry meats, rabbit meats, and fish, including
10 shellfish that is produced under controlled conditions in waters
11 located in California. ~~Products~~

12 (2) *Products* that are characterized as services, arts, crafts,
13 bakery, candies, soaps, balms, perfumes, cosmetics, pottery,
14 clothing, fabrics, pastas, compost, fertilizers, candles, ceramics,
15 foraged foods, and types of wares are not agricultural products for
16 purposes of this chapter. A product that combines an agricultural
17 product with a nonagricultural product or service in a manner that
18 materially increases the purchase price of the product shall
19 disqualify the product from being sold as an agricultural product
20 for purposes of this chapter. *A product that is not an agricultural*
21 *product may be sold within the location of a certified farmers’*
22 *market if the operator of the certified farmers’ market ensures that*
23 *the following conditions are satisfied:*

24 (A) *The product is composed entirely of agricultural products*
25 *grown by the producer, except for incidental ingredients and*
26 *flavorings.*

27 (B) *The product is being offered for sale by a producer who is*
28 *otherwise authorized to sell agricultural products at the certified*
29 *farmers’ market.*

30 (b) “Practice of the agricultural arts” means the undertaking of
31 being predominantly responsible for the decisions and actions
32 encompassing the various phases of producing an agricultural
33 product. The practice of the agricultural arts for fruit, floral, nut,
34 vegetable, and other plant products includes directive or actual
35 responsibility for all the actions of planting, growing, fertilizing,
36 irrigating, cultivating, pest control, and harvesting. The practice
37 of the agricultural arts for agricultural animal products includes

1 directive or actual responsibility for a substantial time of the
2 raising, feeding, veterinary care, and product harvesting.

3 (c) “Producer” means a person, partnership, corporation, or an
4 otherwise legally formed farm or ranch that produces agricultural
5 products by the practice of the agricultural arts upon land that the
6 person or entity owns, rents, leases, sharecrops, or otherwise
7 controls and has the documented legal right to possession. A person
8 or entity that rents, leases, or otherwise acquires the right to
9 possession of property essentially only for or limited to the period
10 of the harvest season of the agricultural products produced on that
11 property shall not be considered a producer under the provisions
12 of this chapter.

13 ~~SECTION 1.~~

14 SEC. 2. Section 47001 of the Food and Agricultural Code is
15 amended to read:

16 47001. (a) The secretary may adopt regulations to encourage
17 the direct sale by farmers to the public of all types of California
18 agricultural products. It is the intent of the Legislature that, in
19 adopting those regulations, the secretary shall endeavor to keep
20 costs incurred by farmers and certified farmers’ market operators
21 to a minimum, recognizing that any administrative costs imposed
22 on farmers and certified farmers’ market operators are generally
23 passed on in the form of increased prices to the ~~consumer~~, *public*,
24 thus economically ~~benefitting~~ *benefiting* neither the public nor the
25 farmer.

26 (b) In accordance with the intent expressed in subdivision (a),
27 the secretary may adopt regulations clarifying the provisions of
28 this chapter, including the adoption of regulations for maintaining
29 the quality and wholesomeness of the products offered for sale
30 and promoting and fostering honest selling activities for those
31 products.

32 (c) The secretary may enter into a cooperative agreement with
33 a county agricultural commissioner to carry out the provisions of
34 this chapter, including, but not limited to, administration,
35 investigations, inspections, registrations, and assistance pertaining
36 to direct marketing producers and outlets. Compensation under
37 the cooperative agreement shall be paid from assessments and fees
38 collected and deposited pursuant to this chapter and shall provide
39 reimbursement to the county agricultural commissioner for

1 associated costs exclusive of the costs of certification and minimum
2 inspections required pursuant to Section 47020.

3 (d) Upon reasonable suspicion of a violation of Section 890, a
4 certified farmers' market operator may contract with a county
5 agricultural commissioner for a special onsite field or storage
6 verification inspection of a direct marketing producer selling in a
7 certified farmers' market operated and controlled by the operator.
8 All contracts and contract fees are subject to the discretion of the
9 county agricultural commissioner in the county where the
10 verification inspections are being requested.

11 ~~SEC. 2.~~

12 *SEC. 3.* Section 47004 of the Food and Agricultural Code is
13 amended to read:

14 47004. (a) Certified farmers' markets are California
15 agricultural product point-of-sale locations that are registered under
16 the provisions of Section 47020 and operated in accordance with
17 this chapter and regulations adopted pursuant to this chapter.

18 (b) The operator of a certified farmers' market shall establish
19 a clearly defined marketing area where only agricultural products
20 may be sold. Only the producer or the lawful authorized
21 representative of the producer may sell agricultural products within
22 the area defined as a certified farmers' market. Sales of agricultural
23 products purchased from another individual or entity shall not
24 occur within a certified farmers' market, and an agricultural product
25 producer or product dealer shall not sell his or her agricultural
26 products to another individual or entity with the understanding or
27 knowledge that the products are intended to be resold in a certified
28 farmers' market in violation of this chapter or the regulations
29 adopted pursuant to this chapter. Every producer selling within a
30 certified farmers' market shall comply with Section 47020.

31 (c) All vendors of agricultural products selling within a certified
32 farmers' market shall do all of the following:

33 (1) Post a conspicuous sign or banner at the point of sale that
34 states the name of the farm or ranch, the county where the farm
35 or ranch maintains the production grounds that produced the
36 products being offered for sale is located, and a statement that "We
37 Grew What We Are Selling" or "We Raised What We Are Selling"
38 or "We Grow What We Sell" or similar phrases that clearly
39 represent that the farm or ranch is only selling agricultural products
40 that they themselves have grown or raised on California land that

1 they possess or control. Product sales by different farms at the
2 same vendor stand shall separate the products from each farm or
3 ranch and correspondingly post the required sign or banner in
4 direct relationship with the sales display of the products produced
5 by each farm.

6 (2) Ensure that all processed agricultural products that they offer
7 for sale state in a clear manner by package label, container label,
8 or bulk sales signage that they consist only, with the exception of
9 incidental flavorings and necessary preservatives, of agricultural
10 products grown or raised by the farm or ranch selling them, the
11 farm or ranch name, and the city where the farm or ranch is located.
12 In addition, every processed product shall identify on a package
13 label, container label, or on bulk sales signage the registration
14 number or other identity reference of the facility where the food
15 was processed, or another required labeling statement or
16 information, in accordance with Sections 110460, 114365, and
17 114365.2 of the Health and Safety Code, or, in the case of meat
18 or poultry products, the identity of the facility where the meat or
19 poultry products were cut and wrapped, in accordance with the
20 applicable United States Department of Agriculture or State of
21 California inspection standards, or, in the case of dairy products,
22 the identity of the facility where the dairy products were
23 manufactured or processed.

24 (3) Ensure all products being represented or offered for sale as
25 organic are clearly labeled or have conspicuous and posted
26 point-of-sale signage identifying the products as organic.

27 (4) Keep product identity, product variety, and quantity of sales
28 records for all agricultural product sales made to consumers from
29 each certified farmers' market at which products were sold.
30 Records of these product sales shall be maintained by the vendor
31 for at least ~~six~~ 12 months from the date of sale.

32 (5) Keep product identity and relative measured weight or
33 volume records of all unprocessed agricultural product delivered
34 to a processing facility for purposes of creating processed
35 agricultural product intended for sale to the public, including the
36 name and address of the processor, the dates when the unprocessed
37 product was delivered by the vendor to ~~said~~ the processor, the
38 dates when the processed product was delivered to the vendor by
39 ~~said~~ the processor, the character and type of processed agricultural
40 product produced by ~~said~~ the processor for the vendor, and the

1 relative measured weight or volume of the processed product
2 delivered back to the vendor. These records shall be maintained
3 by the vendor for a minimum of ~~six months~~. *12 months from the*
4 *date the vendor received the product from the processor.*

5 (d) Upon a written request that specifically identifies the
6 information desired, the records required to be kept pursuant to
7 paragraphs (4) and (5) of subdivision (c) shall be made available
8 for inspection during normal business hours to any state or county
9 enforcement agency charged with enforcement of this chapter
10 within ~~72 hours~~ *three business days* of the delivery of the request,
11 or within a similar period of time that is reasonable for the
12 circumstances prevailing at the time.

13 (e) The representations required pursuant to subdivision (c)
14 shall be subject to the provisions and penalties specified in Section
15 890.

16 (f) An operator of a certified farmers' market that also operates,
17 manages, or otherwise controls a separate sales activity or vending
18 event or marketing area in close proximity, adjacent, or contiguous
19 to the operator's certified farmers' market shall not allow the sale
20 or distribution of fresh whole fruits, nuts, vegetables, cultivated
21 mushrooms, herbs, and flowers by vendors selling within those
22 sales activity or vending event or marketing areas.

23 (g) The operator of a certified farmers' market shall keep an
24 accurate participation record of the individual direct marketing
25 producers whose agricultural products were presented for sale in
26 their market each market day. The operators shall submit to the
27 department a quarterly report of the registration numbers and
28 participation frequency of the direct marketing producers whose
29 agricultural products were presented for sale in the operator's
30 market during that past quarter. The department shall create and
31 maintain online capability for reporting.

32 (h) Operators of certified farmers' markets may establish rules
33 and procedures that are more restrictive and stringent than state
34 laws or regulations governing or implementing this chapter, so
35 long as the rules and procedures are not in conflict with state laws
36 or regulations.

37 (i) Except for certified farmers' markets operated by government
38 agencies, nonprofit entities and other qualified operators of certified
39 farmers' markets shall be considered private entities and may take
40 actions, adopt rules, and impose requirements they deem necessary

1 for the proper and honest operation of their market, subject to the
2 application of any state or other laws. Government agency
3 operators of certified farmers' markets are subject to applicable
4 state laws, the regulations and laws of the governing agency, and
5 other laws governing the conduct and actions they may take as a
6 governmental entity.

7 ~~SEC. 3.~~

8 *SEC. 4.* Section 47005.4 is added to the Food and Agricultural
9 Code, to read:

10 47005.4. (a) Pursuant to an investigation of an alleged violation
11 of Section 890, and upon a request by a state or county enforcement
12 agency specifying the vendor's name, farmers' market location,
13 and farmers' market date, the operator of a certified farmers'
14 market shall *commence to* note and make record of the product
15 identity of all fresh fruits and vegetables that the vendor offered
16 for sale on the specified farmers' market date. The operator shall
17 furnish to the agency copies of ~~these~~ *those* notes and records within
18 ~~72 hours~~ *three business days* of the delivery of ~~the~~ *a subsequent*
19 written request or within a similar period of time that is reasonable
20 for the circumstances prevailing at the time of request.

21 (b) Nothing in this section shall be interpreted to preclude the
22 creation and keeping of additional information that a certified
23 farmers' market operator may endeavor itself to create and keep,
24 or to contractually require the provision of by a vendor as a
25 condition to selling in the operator's farmers' market.

26 ~~SEC. 4.~~

27 *SEC. 5.* Section 47020 of the Food and Agricultural Code is
28 amended to read:

29 47020. (a) An operator of a certified farmers' market shall
30 annually register with the department by applying for and obtaining
31 a certificate from the county agricultural commissioner's office in
32 the county in which the certified farmers' market is located. The
33 application shall include the times and location of the farmers'
34 market, the name and contact information for the operator of the
35 farmers' market, and the agent for service of process for the
36 operator. Upon approval of an application, the county agricultural
37 commissioner shall issue to the operator a certified farmers' market
38 certificate.

39 (b) A certified farmers' market certificate issued by a county
40 agricultural commissioner shall be valid for 12 months from the

1 date of issue, and may be renewed annually thereafter. The county
2 agricultural commissioner shall inspect every certified farmers'
3 market within his or her jurisdiction at least once for every six
4 months of operation. At the time of application or renewal, the
5 county agricultural commissioner shall provide a schedule of fees
6 that reflects an estimate of expenses for inspections and may charge
7 a certification and inspection fee equal to the actual expenses
8 incurred.

9 (c) (1) (A) Before selling at a certified farmers' market, a
10 producer shall register with the department by applying for and
11 obtaining a certificate from the county agricultural commissioner's
12 office in the county in which the producer's land or facility is
13 located. The application shall include a declaration by the producer
14 that he or she is knowledgeable of and intends to produce in
15 accordance with good agricultural practices, as outlined in the
16 Small Farm Food Safety Guidelines published by the department.
17 Upon approval of an application, the county agricultural
18 commissioner shall issue to the producer a certified producer's
19 certificate.

20 (B) A declaration made pursuant to subparagraph (A) shall not
21 be used to infer that the producer is not required to comply with
22 other state or federal laws relative to food safety and good
23 agricultural practices.

24 (2) As part of obtaining or renewing a certified producer
25 certificate, a producer farming fruit, vegetables, nuts, herbs, and
26 similar crops shall annually submit to the county agricultural
27 commissioner's office in the county in which the producer's land
28 or facility is located information requested by the department about
29 the specific crops that he or she will harvest or intends to harvest
30 for sale directly to the public. The secretary may promulgate
31 regulations specifying the information a producer is required to
32 submit.

33 (3) A certified producer's certificate issued by a county
34 agricultural commissioner shall be valid for up to 12 months from
35 the date of issue and may be renewed annually thereafter. The
36 county agricultural commissioner in each county shall perform at
37 least one onsite inspection for all new certified producer's
38 certificate applicants, and may perform additional inspections as
39 needed of the property or properties listed on the certified
40 producer's certificate issued in his or her county as deemed

1 appropriate by the county agricultural commissioner to verify
2 production of the commodities being sold at a certified farmers'
3 market or the existence in storage of the producer's actual harvested
4 production, or both, of any product being sold at a certified
5 farmers' market. Where practical or purposeful, verification
6 inspections shall be made when the actual harvest or sale of the
7 commodity in question is occurring. The county agricultural
8 commissioner shall provide to the producer a schedule of fees that
9 reflects an estimate of expenses for certification or inspection at
10 the time of application or renewal or before any needed additional
11 verification inspection, and may charge a certification and
12 inspection fee equal to the actual expenses incurred.

13 (4) A county agricultural commissioner shall forward a digital
14 copy of each certified producer's certificate issued to the
15 department, and the department shall post each certified producer's
16 certificate on the department's Internet Web site in a timely
17 manner.

18 (d) Renewal of a certified farmers' market certificate or certified
19 producer's certificate may be denied by either the department or
20 a county agricultural commissioner if a certified farmers' market
21 or a producer is delinquent in the payment of the required state fee
22 or a county certification and inspection fee or administrative civil
23 penalty authorized pursuant to this chapter. The certificate may
24 be eligible for renewal when all outstanding balances and
25 associated penalties or administrative fines have been paid to the
26 department or the respective county or counties.

27 ~~SEC. 5.~~

28 *SEC. 6.* Section 47021 of the Food and Agricultural Code is
29 amended to read:

30 47021. (a) Every operator of a certified farmers' market shall
31 remit to the department, within 30 days after the end of each
32 quarter, a fee equal to the number of vendors participating and
33 selling goods under the authority and management of the certified
34 farmers' market operator participating on each farmers' market
35 day for the entire previous quarter. The fee shall be two dollars
36 (\$2) for each vendor whose products were presented for sale on
37 each farmers' market day. A certified farmers' market operator
38 may directly recover all or part of the fee from the participating
39 vendors. An operator of a certified farmers' market located in a
40 county with a population of less than 400,000 that allows only

1 vendors of agricultural products produced by producers on land
2 located in the same county as the certified farmers' market may
3 petition the secretary for a vendor fee of one dollar (\$1). The
4 petition shall include a statement of verification of the information
5 upon which the petition is based by the county agricultural
6 commissioner in the county where the certified farmers' market
7 is located.

8 (b) An operator of a certified farmers' market who fails to pay
9 the required fee within 30 days after the end of the quarter in which
10 it is due shall pay to the department a monthly interest charge on
11 the unpaid balance and a late penalty charge, to be determined by
12 the department and not to exceed the maximum amount permitted
13 by law.

14 (c) All fees collected pursuant to this section shall be deposited
15 in the Department of Food and Agriculture Fund. The money
16 generated by the imposition of the fees shall be used, upon
17 appropriation by the Legislature, by the department to cover the
18 reasonable costs to carry out this chapter, including all of the
19 following actions undertaken by the department:

20 (1) The coordination of the Certified Farmers' Market Advisory
21 Committee or any ad hoc direct marketing advisory committee.

22 (2) The evaluation of county enforcement actions and assistance
23 with regard to multiple county enforcement problems.

24 (3) The adoption of regulations to carry out the provisions of
25 this chapter pertaining to certified farmers' markets.

26 (4) Hearings from actions taken to enforce this chapter.

27 (5) The maintenance of a current statewide listing of certified
28 farmers' markets locations.

29 (6) The maintenance of an online, publicly accessible database
30 listing all current certified producer certificates.

31 (7) The dissemination to all certified farmers' markets
32 information regarding the suspension or revocation of any
33 producer's certificate and the imposition of administrative
34 penalties.

35 (8) Other actions, including the maintenance of special fund
36 reserves, that are recommended by the Certified Farmers' Market
37 Advisory Committee or any ad hoc direct marketing advisory
38 committee and approved by the department for purposes of carrying
39 out this chapter pertaining to certified farmers' markets.

1 (9) Investigation and enforcement expenses, including expenses
2 incurred by any county agricultural commissioner for actions
3 conducted pursuant to this chapter.

4 ~~SEC. 6.~~

5 *SEC. 7.* No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution for certain
7 costs that may be incurred by a local agency or school district
8 because, in that regard, this act creates a new crime or infraction,
9 eliminates a crime or infraction, or changes the penalty for a crime
10 or infraction, within the meaning of Section 17556 of the
11 Government Code, or changes the definition of a crime within the
12 meaning of Section 6 of Article XIII B of the California
13 Constitution.

14 However, if the Commission on State Mandates determines that
15 this act contains other costs mandated by the state, reimbursement
16 to local agencies and school districts for those costs shall be made
17 pursuant to Part 7 (commencing with Section 17500) of Division
18 4 of Title 2 of the Government Code.